SUPREME COURT OF THE UNITED STATES.

No. 31.

JAMES WHITE, PLAINTIFF,

VERSUS

HIRAM TURK, JAMES VAUGHN, AND WILLIAM GRANT.

CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT UNITED STATES FOR EAST TENNESSEE.

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Langtree and O'Sullivan, print.

Be it remembered that, heretofore, at a circuit court of the United States for the seventh circuit and district of East Tennessee, held at the court-house in Knoxville, on the second Monday of October, in the year of our Lord one thousand eight hundred and thirty-three, the marshal for the district of East Tennessee returned into court a capias ad respondendum, in the words and figures following, to wit:

"THE PRESIDENT OF THE UNITED STATES, *to the marshal of East Tennessee district, greeting:*

You are hereby commanded to take Hiram K. Turk, if to be found in your district, and him safely keep, so that you have his body before the honorable the judges of the court of the United States for the seventh circuit, in the district of East Tennessee, at the court-house in Knoxville, on the 2d Monday of October next, to answer James White, a citizen of Virginia, in a plea of debt, that he render unto him the sum of seven hundred and seventy-eight dollars and twenty-one cents, which to him he owes, and from him unjustly detains, to his damage, two hundred and fifty dollars; and have you then there this writ.

Witness, the honorable John Marshal, chief justice of the Supreme Court of the United States, the 1st Thursday after the third Monday of April, 1833, and 57th year of the independence of the United States.

W. C. MYNATT, *Clerk, &c.*"

On the back of said writ are the following indorsements, to wit: "No. 649, cap. ad resp.; James White *vs.* H. K. Turk, issued 29th August, 1833. Debt $778 21¼—damages $250; came to hand same day. W. Lyon, marshal, &c. Not found. W. Lyon, marshal, &c., travel 104 miles."

The following bond had been previously entered into to prosecute said suit, to wit:

"EAST TENNESSEE DISTRICT.

Know all men by these presents, that we, James White and Ebenezer Alexander, are jointly and severally held and firmly bound unto Hiram K. Turk, in the penal sum of two hundred and fifty dollars, to be void on condition that the said James White does with effect prosecute a suit, by him this day commenced in the court of the United States for the seventh circuit, in the district of East Tennessee, against the said Hiram K. Turk; otherwise pay and satisfy all costs and damages which may be awarded for failure therein. Witness our hands and seals, this 29th day of August, 1833.

JAMES WHITE, [SEAL.]
By his attorney, E. Alexander.
EBENEZER ALEXANDER. [SEAL.]

On the 18th of March, 1834, an alias capias ad respondendum, issued in said cause, in the words and figures following, to wit:

"THE PRESIDENT OF THE UNITED STATES, *to the marshal of East Tennessee district, greeting:*

You are hereby commanded, as you have heretofore been, to take Hiram K. Turk, if he be found in your district, and him safely keep, so that you have his body before the honorable the judges of the court of the United States for the seventh circuit, in the district of East Tennessee, at the court-house in Knoxville, on the first Thursday after the 3d Monday of April next, to answer James White, a citizen of the State of Virginia, in a plea of debt, that he render unto him the sum of seven hundred and seventy-eight dollars and twenty-one cents, which to him he owes, and from him unjustly detains, to his damage two hundred and fifty dollars; and have you then there this writ.

Witness the honorable John Marshal, chief justice of the Supreme Court of the United States, the 2d Monday of October, 1833, and 57th year of the independence of the United States.

W. C. MYNATT, *Clerk.*"

On the back of which said writ, are the following indorsements:—"No. 649, alias cap. ad resp.; James White *vs.* Hiram K. Turk. Issued 18th March, 1834, to April rules, 1834. Thomas C. Lyon is authorized to execute the within and make return thereof. W. Lyon, marshal, &c. Executed and bond taken. Thos. C. Lyon, d. m. Travel 100 miles." Which bond is in the words and figures following, to wit:

"UNITED STATES, *District of East Tennessee:*

Know all men by these presents, that we, Hiram K. Turk and William R. Caldwell, all of the district of East Tennessee, are held and firmly bound unto William Lyon, marshal of said district, in the sum of one thousand and thirty dollars; to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, or administrators, firmly by these presents; to be void on condition that the above bound Hiram K. Turk doth make his personal appearance before the honorable the judges of the court of the United States, in the district of East Tennessee, at a court to be held for said district at the court-house in Knoxville, on the 3d Monday of April, then and there to answer James White, a citizen of Virginia, in a plea of debt, that he render unto him seven hundred and seventy-eight dollars and twenty-one cents, which to him he owes, and from him unjustly detains to his damage, two hundred and fifty dollars, and abide the judgment and decree of said court thereon, and not depart the same without leave. Witness our hands and seals, this 31st day of March, 1834.

HIRAM K. TURK, [SEAL.]
WILLIAM R. CALDWELL. [SEAL.]

On the back of which said bond is the following assignment, to wit: "I, William Lyon, marshal of the district of East Tennessee,

do hereby assign the within obligation and condition to James, the plaintiff therein named, his executors and administrators, to be sued for according to the statute in such case made and provided. Witness whereof, I have hereunto set my hand and seal, this 31st day of March, 1834.

W. LYON, *Marshal, &c.*"

And at April rules, 1834, James White, the plaintiff in said cause, filed his declaration, as follows, to wit:

"UNITED STATES OF AMERICA, *seventh judicial circuit, district of East Tennessee.* } April rules, 1834.

James White, a citizen of the State of Virginia, one of the United States of America, by attorney, complains of Hiram K. Turk, a citizen of and resident in the district of East Tennessee, in the custody of the marshal, &c., of a plea of debt, that he render unto him the sum of seven hundred and sevety-eight dollars and twenty-one and one half cents, which to him he owes, and from him unjulsty detains: for that whereas, heretofore, viz: on the 20th day of November, in the year of our Lord one thousand eight hundred and thirty-two, at, to wit, &c., aforesaid, the said Hiram K. Turk made, executed, and delivered to the said plaintiff, his certain bill single or writing obligatory, signed with his own proper name and sealed with his seal, and which is now here to the court produced and shown, the date whereof is the day and year last aforesaid; wherein and whereby he, the said defendant, by the style and description of Hiram K. Turk, acknowledged himself indebted to, and promised to the said plaintiff on the twenty-fifth day of August thence next ensuing, (meaning the 25th day of August, 1833,) the said sum of seven hundred and seventy-eight dollars and twenty-one and one half cents, with interest from the date thereof, for value received of him, the said plaintiff, by the said defendant; yet the said defendant, although often requested so to do, hath not as yet paid the said sum above demanded, or any part thereof, to the said plaintiff; but to pay the same, hath hitherto wholly refused, and still refuses so to do, to the damage of the said plaintiff two hundred and fifty dollars; and therefore he sues, and hath pledges, &c.

ALEXANDER, *Att'y for Plff.*"

Thereupon, at June rules, 1834, said Hiram K. Turk filed his plea, in the words and figures following, to wit:

"June rules, 1834. And the defendant, by attorney, comes and defends the wrong, &c., when, where, &c.; and, for plea, says he has paid the debt in the declaration mentioned; and of this he puts himself on the country.

ANDERSON, *Atto. for Def't.*

And the pl'ff also.

JARMAGIN & ALEXANDER,
Atto's.

At a court of the United States for the seventh circuit and district of East Tennessee, began and held at Knoxville on Monday the 13th day of October, 1834: Present on the bench, the honorable John McLean, associate judge, &c., and the honorable Morgan W. Brown, district judge; the following entry was made in said cause, to wit:

"JAMES WHITE
vs.
HIRAM K. TURK.

This day came the parties, by their attorneys; and the defendant, by his counsel, having withdrawn his plea, it is considered by the court that the plaintiff recover against the defendant the sum of seven hundred seventy-eight dollars twenty-one and one half cents, the debt in the declaration mentioned, and also the sum of eighty-eight dollars, the interest due thereon, making the sum of eight hundred sixty-six dollars twenty-one and one half cents, together with the costs of this cause; for which execution may issue."

Upon said judgment, on the 11th Sept., 1835, a capias ad satisfaciendum was issued, in the words and figures following, to wit:

THE PRESIDENT OF THE UNITED STATES, *to the marshal for the district of Tennessee.*

You are hereby commanded, as you have heretofore been, to take the body of Hiram K. Turk, and him safely keep, until he pay and satisfy the sum of eight hundred ninety-three dollars sixty-seven and one-third cents, which James White lately in our court of the United States, in the seventh circuit and district of East Tennessee, recovered against him for damages and costs, whereof said defendant is convicted, as appears of record; and that you have said money ready to render before the judge of our said court, at the court-house in Knoxville, on the 2d Monday of October next; and have then there this writ.

Witness the honorable John Marshal, chief justice of the Supreme Court of the United States, the first Thursday after the 3d Monday of April, 1835.

W. C. MYNATT, *Clerk.*

Upon the back of this writ are the following indorsements, to wit:

Bill of Costs.

Clerk - - - -	$7 80	
2 Ca sas - - - -	33⅓	
Marshal - - - - -		$8 13⅓
Lyon - - - - -		13 07½
Atto. - - - - -		6 25
		$27 46½
Judgment, 13th October, 1834, for - -		866 21¼
		$893 67⅓

No. 734, ca sa; Jas. White *vs.* H. K. Turk, issued 11th Sept., 1835, to October term, 1835. Came to hand Sept. 14th, 1835. H. G. Burnett, d. m. Executed by arresting the defendant, and took bond according to act of Assembly the 22d, 1835. Travelled 90 miles.

H. G. BURNETT, *D. M.*"

The bond returned by the dept. marshal with the before named writ, is in the words following, to wit:

"Know all men by these presents, that we, Hiram K. Turk, James Vaughn, and William Grantt, are held and firmly bound to James White, in the penal sum of seventeen hundred and eighty-seven dollars and thirty-five cents, for the payment of which they bind themselves and their heirs, jointly and severally, &c; but to be void on condition that the said Hiram K. Turk make his personal appearance at the court-house in Knoxville, on the 2d Monday of October next, then and there to pay a debt recovered by James White, in the circuit court of the United States, against the said Hiram K. Turk, for the sum of eight hundred and sixty-six dollars and twenty-one and a half cents, take the oath of insolvency, or make a surrender of his property, as prescribed by the laws of this State; otherwise this bond to remain in full force and virtue.

Given under our hands and seals, this 22d day of September, 1835.

H. K. TURK, [SEAL.]
JAMES VAUGHN, [SEAL.]
WM. GRANT. [SEAL.]

Witness:
H. G. BURNETT."

Afterwards, at a circuit court of the United States for the seventh circuit and district of East Tennessee, and on the 14th day of October, 1835, the following proceedings were entered of record in said cause, and upon said ca. sa. and bond, to wit:

JAMES WHITE *vs.* HIRAM K. TURK, JAMES VAUGHN, *and* WILLIAM GRANT.

This day came the plaintiff, by his attorney, and heretofore, on the 11th day of September, 1835, a capias ad satisfaciendum issued from the clerk's office of this court, at the intance of James White, against said Hiram K. Turk, upon a judgment dated the 13th of October, 1834, for the sum of eight hundred and sixty-six dollars twenty-one and a half cents, debt and damages, and also the sum of twenty-seven dollars forty-six and a fourth cents, costs of suit; which ca. sa. came to the hands of the marshal of East Tennessee on the 14th September, 1835, executed on defendant Turk, the 22d September, 1835, said marshal returned into this court, a bond executed according to law, with said James Vaughn and William Grant surities, said Turk failing to appear and pay said debt, or surrender a sche-

dule of his property, or take the benefit of the insolvent debtor's oath; on motion of plaintiff, by his attorney, it is considered by the court that said plaintiff, James White, recover against said Hiram K. Turk, James Vaughn, and William Grant, the said sum of $866 21½, the amount of debt and damages, and the further sum of $51 97, interest on said judgment up to this time, and also the further sum of $27 46¼, the costs stated on said ca. sa., and also the costs of this motion, and costs accruing on said ca. sa.; for all which execution may issue.

On the 14th of October, 1835, a fieri facias was issued upon the foregoing judgment, in the words and figures following, to wit:

"THE PRESIDENT OF THE UNITED STATES, *to the marshal of East Tennessee District, greeting.*

You are hereby commanded, that of the goods and chattels, lands and tenements of Hyram K. Turk, James Vaughn, and William Grant, in your district, you cause to be made the sum of nine hundred sixty-two dollars fifty six and one-fourth cents which James White lately, in our court of the United States, in the seventh circuit for the district of East Tennessee, recorded against them for debt, damages, and costs, whereof the said defendants are convicted, as appears of record; and that you have said money ready to render before the judge of our said court, at the court-house in Knoxville, on the first Thursday after the first Monday in April next, and have then there this writ. Witness the Hon. John Marshall, chief justice of the Supreme Court of the United States, the second Monday of October, 1835.

W. C. MYNATT, *Clerk.*"

Bill of Costs.

Clerk, - - - - -	$3 66⅔
Marshal Burnett, - - - -	7 00
Atto. Jarnagin, - - - -	6 25
	16 91⅔
Judgment, 14th October, 1835, for - -	945 64¾
	$962 54¼

On the back of said fieri facias are the following endorsements, to wit: "No. 753, fi. fa. James White *vs.* Hiram K. Turk, James Vaughn, and William Grant; issued 14th October, 1835. Came to hand the same day, H. G. Burnett, d. m. Levied upon the property of J. Vaughn and William Grant, 10th November, 1835; travelled 180 miles.

H. G. BURNETT, *D. M.*"

On the 15th of December, 1835, said James Vaughn and William

Grant filed in the office of the clerk of the circuit court of the United States for the seventh circuit and district of East Tennessee, at Knoxville, three petitions directed to the Hon. John McLean, and his fiat, thrown in the words and figures following, to wit:

"*To the Hon. John McLean, judge of the circuit court of the United States for the circuit including the district of East Tennessee.*

The petition of James Vaughn and William Grant, of said district, humbly showeth, that at the October term, 1834, of the circuit court for said district and circuit held at Knoxville, a judgment was rendered in favor of James White against Hyram K. Turk, for about the sum of eight hundred and ninety-three dollars sixty-seven and one-third cents. This judgment was rendered on a note executed by Turk to White, in November, 1832. A ca sa for the body of said Turk issued, as your petitioners suppose, upon this judgment, dated or issued on the 11th September, 1835, to October term, 1835. Turk was arrested on this ca sa (a copy of which is annexed, marked A, and to be taken as part of this petition,) by the deputy marshal of East Tennessee, on the 22d day of September, 1835. Said Turk, when arrested, called upon your petitioners to become his security to a bond (a copy of which is annexed, marked B, and to be taken as part of this petition.) Your petitioners signed said bond. Your petitioners state they reside in a remote county from where the court was held. The ca sa and bond were returned by the marshal to the federal court at Knoxville, at the October term, 1835, as they suppose. Neither of your petitioners were present at said court. Your petitioners state that, at said term of the court, a judgment was entered against them, with Turk, upon motion, for about the sum of nine hundred and forty-five dollars sixty-four and three-fourth cents, besides costs of the motion. Your petitioners show expressly that the judgment is void, for the following reasons, as they are advised.

1st. It is taken in court without notice.

2d. The bond did not, under any act of Tennessee, authorize the judgment, because the bond is not taken in pursuance of the act of the Legislature of Tennessee, as they are informed and believe.

3d. Said bond does not recite the ca sa nor set out the sum called for on the face of the ca sa, as the law requires, as they are informed and believe.

4th. The judgment is taken for more than the amount set out in the bond, being taken for $945 64¾, besides costs of motion, while the bond recites that the amount of the judgment rendered in favor of White was $866 21½ cents, and the ca sa, on which Turk was arrested, is for satisfaction of a judgment in favor of White, against Turk, for the sum of $893 67⅓ cents. Your petitioners state that the judgment was rendered, on motion, against them, under the act of Tennessee of 1824, chapter 17, the 1st 2d, and 3d sections of which are in the words following:

1*st sec.* Whenever the body of any debtor shall be taken in execution, in any final process issued by any of the courts of record in

this State, it shall be the duty of the officer serving such process to take bond, with sufficient security, if tendered, for the appearance of such debtor, at the next county court of the county in which he resides, then and there to make payment of the moneys called for in said process, or to take the oath of insolvency, or make a surrender of his property, as prescribed by the laws of this State.

2*d sec.* On the return of said process and bond, as required by the first section of this act, it shall be the duty of said court, on the application of such debtor, to administer the oath of insolvency, under the same rules, regulations, and restrictions, as authorized by the laws now in force and use in this State, so far as the same is consistent with the provisions of this act.

3*d sec.* If such debtor shall fail to appear at the court to which said process is returnable, or to take the oath of insolvency, or make a full and fair surrender of his property and effects of every description, in such manner as such court shall direct, then, and in such case, the said court shall be authorized to enter up judgment, on motion, against said debtor and security for principal, interest, and costs on said process, and execution shall issue thereon, as in other cases.

Your petitioners state that the foregoing is a copy of the act of Tennessee, upon which the judgment was rendered, as they are informed. Your petitioners state that they are informed and believe that said judgment is illegal and void, for the following reasons:

1st. It is taken in court without notice.

2d. The bond, under any act of Assembly, did not authorize the judgment, because it is not taken in pursuance of the act, not reciting the ca sa, and setting out the sum on the face of the ca sa, as required by the act; and

3d. Because the judgment is taken for more than the amount set out in the bond, being taken for $945 64¾, and the bond being only for $866 21½ cents. Your petitioners state that they are advised and believe, that it has always been held and ruled by the courts of Tennessee, that on this and similar acts of Assembly, to authorize judgment on such a summary proceeding, that the bond must be taken in accordance with the statute precisely; that, not being in accordance with the proceedings at common law, the statute must be strictly pursued, for the variance between the ca sa and any bond produced; the bond was, at most, a bond at common law, and not a statutary bond; and, for the reasons stated, the judgment having nothing for its basis, and being taken without notice in any form, is void, as they are advised. Your petitioners state that an execution on said judgment has been sued out and levied upon the property of your petitioners. The premises considered, your petitioners pray your honor to grant them a supersedeas to stay all proceedings on said judgment and execution until the next term of your honorable court, that they may have a day in court, and hearing upon the premises; and, as in duty bound, will pray, &c.

JAMES VAUGHN,
WM. GRANT.

UNITED STATES OF AMERICA, *seventh circuit and district of East Tennessee.*

On the 27th day of October, 1835, before me, W. C. Mynatt, clerk and master, personally appeared James Vaughn and William Grant, the within named persons, and made oath that the facts stated in this bill of complaint, praying a supersedeas, are true, as of their own knowledge; and the facts stated as being derived from information, they believe to be true.

JAMES VAUGHN,
WM. GRANT.

Sworn to and subscribed before me, this 27th October, 1835.

W. C. MYNATT,
Clerk and Master.

Exhibit (B.)

Know all men by these presents, that we, Hyram K. Turk, James Vaughn, and William Grant, are held and firmly bound to James White, in the penal sum of seventeen hundred and eighty-seven dollars and thirty-five cents, for the payment of which they bind themselves, their heirs, jointly and severally, &c.; but to be void on conditions that the said Hyram K. Turk make his personal appearance at the court-house in Knoxville, on the 2d Monday of October next; then and there to pay a debt recovered by James White, in the circuit court of the United States, against the said Hyram K. Turk, for the sum of eight hundred and sixty-six dollars and twenty-one and a half cents, take the oath of insolvency, or make a surrender of his property, as prescribed by the laws of this State; otherwise this bond to remain in full force and virtue.

Given under our hands and seals, this 22d day of September, 1835.

H. K. TURK, [SEAL.]
JAMES VAUGHN, [SEAL.]
WM. GRANT. [SEAL.]

Witness,
H. G. BURNETT.

Fiat.

I allow an injunction in this case, and the clerk of the circuit court will issue it, on the applicant's giving bond and security in double the amount of the judgment.

JOHN McLEAN,
Justice Sup. Court U. States 7th circuit.

W. C. MYNATT, Esq.,
Clerk circuit court U. States eastern district Tennessee.
13th November, 1835."

The petitioners, James Vaughn and William Grant, entered into bond in the words and figures following, to wit:

"Know all men by these presents, that we, James Vaughn, William Grant, William Ainsworth, and Gilford Cannon, are jointly and severally held and firmly bound unto James White, in the penal sum of one thousand eight hundred and ninety-one dollars twenty-nine and one half cents, to the which payment, well and truly to be made and done, we bind ourselves, our and each of our heirs, executors, and administrators, firmly, by these presents. Witness our hands and seals, this 15th day of December, 1835. The condition of this obligation is such, that whereas, the said James Vaughn and William Grant hath obtained and filed their petition praying a supersedeas in the case wherein James White is plaintiff, and Hiram K. Turk, James Vaughn, and William Grant are defendants, to stay an execution which issued in said cause upon a judgment rendered in the circuit court of the United States, for the seventh circuit and district of East Tennessee, at October term, 1835, at a court held at Knoxville, the second Monday of October, 1835, aforesaid, and which supersedeas is awarded by the mandate of the Hon. John McLean, judge, &c., as to said James Vaughn and William Grant. Now, if the said James Vaughn and William Grant shall well and truly prosecute said cause with effect, or, in case of failure, shall well and truly pay and satisfy all such costs and damages as shall be awarded against them, and shall well and truly abide by and perform the decree or order of the court made therein, then this obligation to be void, otherwise this obligation to remain in full force and virtue.

JAMES VAUGHN, [SEAL.]
WM. GRANT, [SEAL.]
WM. AINSWORTH, [SEAL.]
GUILFORD CANNON, [SEAL.]

Witness,
W. C. MYNATT, *Clerk.*"

And afterwards, at a circuit court of the United States, held at Knoxville, for the seventh circuit and district of East Tennessee, and on the 14th day of October, 1836, the following proceedings were had of record in said cause, to wit:

"*James Vaughn and William Grant* vs. *James White.*

This day came on this cause for argument; the same being fully understood, it is considered by the court that the supersedeas issued in this cause be discharged, and that execution issue upon the original judgment against Hiram K. Turk and them which, by the consent of the attorney for James White, is to be levied alone, of the goods and chattels, lands and tenements, of said Hiram K. Turk, unless hereafter otherwise ordered by this court.

And on the same day, the following entry was made of record, to wit:

"*Circuit court of the United States, seventh circuit and district of East Tennessee, October term,* 1836.

JAMES VAUGHN AND WILLIAM GRANT *vs.* JAMES WHITE.

At the term aforesaid, a petition having been filed in this cause,

and, on a motion being made to set aside the judgment complained of, and for the reasons assigned in the petition, and on the ground that the statutes of the State of Tennessee, referred to in the petition, and under which the bond was taken, and the judgment on it rendered on a part of the insolvent laws of the State, and cannot apply to proceeding on an execution issued from the federal court; and, on a full consideration of the subject, the opinions of the judges were opposed on the following points:

1st. Whether the omission to name in the bond the sum called for in the execution, and the naming a different sum, does not vitiate it?

2d. Whether the omission to state in the bond the court before which the defendant is to appear, take the oath of insolvency, or surrender his property, does not vitiate it?

3d. Whether the omission to set out in the bond the writ of execution, or to refer to it, does not vitiate it?

4th. Whether the proceedings authorized by the statutes of the State of Tennessee, passed in 1824, chap. 17, and in 1825, ch. 57, can apply to the federal courts?

5th. Whether, on account of the above defects, the bond is not void, and the proceedings on it, under the above statutes, consequently a nulity? And, on application of the plaintff's counsel, the above points are certified to the Supreme Court of the United States for their decision, agreeably to the act of Congress.

THE UNITED STATES OF AMERICA, *seventh circuit and district of East Tennessee.*

I, William C. Mynatt, clerk of the circuit court of the United States for the seventh circuit and district of East Tennessee, do hereby certify, that the foregoing is a true and perfect [SEAL.] transcript of the record and proceedings of the case therein stated, as appears by the records and files in this office. Given under my hand and seal of office, at office in Knoxville, this 23d day of November, 1836.

W .C. MYNATT, *Clerk, &c.*